

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC.,)
and DOUGLAS FRIANT,)
Defendants.)

DEFENDANTS’ OBJECTION TO
PLAINTIFFS’ NOTICE OF INTENT TO FILE “REPLY” (Document 154)

Defendants object to plaintiffs’ “Notice Of Intent To Reply To Objection To Plaintiffs’ Brief” [sic] (Document 154).

Apparently plaintiffs seek to justify a “reply” under Local Rule 7.1(e), but that rule only relates to replies to objections to motions, not to briefs. Here, the Court requested briefs and directed the parties to enter a briefing schedule (Document 147, at 17); the parties did that by motion of plaintiffs assented by defendants (Document 150); and the Court granted that motion (Endorsed Order dated 04/16/08). The schedule did not call for a “reply,” and Rule 7.1(e) does not authorize it.

Defendants would not ordinarily object but do so here in the context of plaintiffs’ already-shifting theories in the case. As noted by the Court in its Order requesting these briefs,

defendants justifiably complain about what seems to be a constantly moving target, given plaintiffs’ serial reliance on alternate theories of authorship

[note 3] Those theories are: (1) the registration form’s now-disclaimed identification of T-Peg as author; (2) the apparent portrayal of Timberpeg Services as author in interrogatory answers, which attributed all of Timberpeg’s design time to Downey; and (3) plaintiff’s current theory that Timberpeg East was the author, due to Cole’s creation of the work.

Document 147 at 11. Undoubtedly, yet another brief by plaintiffs will initiate yet another theory of authorship and standing. Plaintiff's ability to constantly allege new theories in response to defendants' pleadings proving the current theory untenable should come to an end.

The Court should not permit a further "reply" from plaintiffs.

Date: June 5, 2008

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT,
Defendants,

/s/ W. E. Whittington
W.E. Whittington

W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755
ned@whittington-law.com

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2008, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

Daniel E. Will, Esq.
Jonathan Shirley, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105
dwill@deviinemillimet.com
jshirley@devinemillimet.com

/s/ W. E. Whittington
W.E. Whittington